

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

THE BIG GREEN EGG, INC.,

Plaintiff,

v.

AIYIXIAO, *et al.*,

Defendants.

Civil Action No.

DECLARATION OF GARY D. HOOPER

I, GARY D. HOOPER, declare that the following facts are true and accurate to the best of my knowledge, information and belief.

1) I am over eighteen (18) years of age, am fully competent to attest to the matters stated herein, have personal knowledge of every statement made in this Declaration, and all such statements are true and correct.

2) I am the Business Operations Manager of The Big Green Egg, Inc. (the "Company" or "Big Green Egg").

3) My responsibilities include ensuring the Company's intellectual property portfolio is current, as well as enforcing the Company's intellectual property rights which includes, but is not limited to, identifying third parties who are infringing the Company's trademarks and assisting with the Company's efforts to combat these counterfeiters and infringers.

I. Background.

4) Ed Fisher, the Company's founder, discovered the 'kamado' (translated to 'oven' or 'hearth' in Japanese) domed clay oven during his travels in Japan as an American serviceman in the 1950s. The ancient 'kamado' wood-fired clay ovens have been used in East Asia for over 3,000 years because the shape helps to add flavor and juiciness to meat.

5) In 1974, the first Big Green Egg store opened in Atlanta, Georgia. Originally importing both Japanese and Chinese kamados over to the United States, Ed Fisher soon realized that, despite the great results they produced, the original clay cookers were fragile and prone to breaking after exposure to various elements such as high heat and weather. For this reason, Ed Fisher committed to modernizing and perfecting the ancient cooking technology and to distinguish his kamado cookers from conventional grills on the market.

6) In addition to a distinctive green, dimpled surface, Ed Fisher adopted the trademark BIG GREEN EGG and now, forty-five years later, BIG GREEN EGG is one of the world most recognizable brands. The Company's cookers are widely known as EGG cookers.

7) As the EGG cookers gained popularity, the Company committed to produce an improved version of their cooker using a higher grade of ceramics that was specifically developed by NASA to withstand and hold extremely high heat levels

without suffering damage. The result was a superior cooker that is stronger, more durable, and provides better heat insulation than anything else on the market, a distinction Big Green Egg is known for today.

8) The shape of the Big Green Egg cooker is designed to contain the heat by using two draft doors, one at the bottom and another at the top. The bottom draft door slides horizontally creating more or less air flow. This works in conjunction with the top draft door, that swivels left and right, creating more or less updraft, and in turn adjusting the temperature used in the cooker. The result is precise temperature control and optimal cooking performance.

9) Passionate fans of Big Green Egg, often referred to as Eggheads, can attest to the fact that the innovative technology and shape of the grill allows for faster cooking than other grills, require less charcoal, and hold and distribute heat more evenly. Fans also tout the adaptability of the grill because it can be used to grill, roast, smoke and bake, and can make anything from turkey to Bundt cakes. Therefore, wide popularity of the cooker continued to flourish.

10) Presently, more than 4,000 retailers across the nation stock Big Green Egg products, which has grown more than 20 percent every year for the past two decades. Not only that, many restaurants in the Atlanta area alone feature the Company's EGG cookers. Kevin Rathbun Steak, a prime steakhouse located in the Atlanta area

and widely known as one of the top steakhouses in the United States, features menu items such as a pork shoulder entrée smoked on a Big Green Egg cooker.

11) The revolutionary outdoor cooking technology of Big Green Egg has garnered the brand a cult-following in the universe of kamado users. Festivals, known as EGGFESTS and EGGTOBERFEST, are among the many events widely held where new techniques are shared during cooking exhibitions and communities of users are forged.

12) Big Green Egg is now the world's largest producer and international distributor of the highest-quality ceramic cooking system. The grills are put through strict quality procedures during manufacturing to ensure perfected production.

13) The Company continues to expand and now includes seven different sizes with hundreds of accessories, known as EGGCESSORIES, designed specifically for use on the grill, which are available throughout the world in over fifty countries.

II. The Company's Trademarks

14) The Company owns numerous registered and common law trademarks, including "BIG GREEN EGG", "EGG", "EGGFEST", "EGGSPERT", "EGGHEAD", "EGGCESSORIES", "EGG MATES", "LITTLE GREEN EGG" and a Three-Dimensional Trademark consisting of the color green applied to a kamado style grill and smoker, as shown below:



(the “Marks”).

15) True and correct copies of the Company’s federal trademark registrations for the Marks are attached collectively as Exhibit A to the Complaint.

III. Efforts to Combat Counterfeiters and Infringers

16) With the popularity of our brand and product line has come a flood of counterfeit and infringing products. Many third parties use the Company’s Marks on or in connection with the advertising and sale of a variety of products, thereby infringing the Company’s trademarks.

17) The sale of counterfeit and infringing products poses a real threat to our brand, the sustainability of the Company’s business, and to the individuals and families who unwittingly purchase them.

18) The Company spends considerable time and resources fighting counterfeiters throughout the year.

19) We regularly use standard notice and takedown procedures to remove counterfeit and infringing goods from the Internet. Despite these efforts, counterfeit and infringing products continue to be readily available through major e-commerce marketplaces, including but not limited to: Alibaba, AliExpress, DHGate and Wish (each a “Marketplace” and collectively the “Marketplaces”).

20) In our experience, the Marketplace IPR notice and takedown mechanisms have been wholly ineffectual in our continuing fight against the marketing and sale of counterfeit products bearing the Company’s Marks.

21) The proliferation of counterfeit products harms our valuable brand in several ways. First, we are only able to control the quality of products manufactured and sold under our brands. Additionally, if consumers are dissatisfied with the quality of the counterfeit product they purchase, that displeasure will be attributed to the Company and its brand.

IV. Identifying Counterfeiters and Infringers

22) We can typically identify counterfeit versions of the Company’s products by visual inspection; the country of origin; the packaging materials for the products; and/or the price at which the products are sold. Working together with the law firm of The Sladkus Law Group, we have confirmed that each Defendant is using a mark that is confusingly similar to one of our Marks on goods that are highly similar or competitive to our products. None of the Defendants is, or has ever been, authorized

to manufacture or distribute any of the Company's products. The Company has never licensed any of the Defendants to use any of the Company's Marks on or in connection with the advertising and sale of any products.

23) We do not publicly disclose the particular details of how we are able to identify counterfeit products. If these methods become public, manufacturers and distributors of counterfeit products will quickly adjust their procedures. This will make it even more difficult for the Company and consumers to determine which goods are genuine and which are counterfeit.

[Signature on following page.]

I declare under penalty of perjury that the foregoing facts are true and correct and that I signed this declaration on the date set forth below.



GARY D. HOOPER
Business Operations Manager

THE BIG GREEN EGG, INC.

Date: _____

11/15/20